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**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:

City of Havre de Grace  
Department of Public Works  
2 Jerry Foster Way  
Havre de Grace, MD 21078

Respondent

**ADMINISTRATIVE ORDER  
ON CONSENT**

Docket No. CWA-03-2017-0056DW

**I. STATUTORY AND REGULATORY BACKGROUND**

1. EPA has made the following findings of fact and issues this Administrative Order on Consent (Consent Order) pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) under Section 309(a) of the Clean Water Act (CWA or Act), 33 U.S.C. § 1319(a). This authority has been delegated by the Administrator to the Regional Administrator of EPA Region III, and further delegated to the Director, Water Protection Division, Region III.

2. Section 309 of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any permit condition or limitation implementing certain CWA sections in a permit issued under Section 402 of the Act, 33 U.S.C. § 1342, he shall issue an Order requiring such person to comply with such section or requirement. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.

3. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point

sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit. Section 402(b) of the Act provides for the authorization of state programs to issue NPDES permits.

4. “Discharge of a pollutant” includes “any addition of any pollutant or combination of pollutants to waters of the United States from any point source.” 40 C.F.R. § 122.2.

5. “Storm water” is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).

6. The term “municipal separate storm sewer system” (“MS4”) includes, “a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.” 40 C.F.R. § 122.26(b)(8)(i).

7. The term “small municipal separate storm sewer system” or “small MS4” means “all separate storm sewers that are: (i) Owned or operated by the United States, a State, city, town, borough . . . or other public body (created by or pursuant to State law) having jurisdiction over disposal of . . . storm water. . . ; [and] (ii) Not defined as ‘large’ or ‘medium’ municipal separate storm sewer systems.” 40 C.F.R. § 122.26(b)(16).

8. Small MS4s are regulated pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p) and the regulations promulgated thereunder. Pursuant to 40 C.F.R. § 122.26(a)(9)(i), small MS4s require an NPDES permit if they are required to be regulated pursuant to 40 C.F.R. § 122.32.

## **II. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS AND CONCLUSIONS OF LAW**

10. Havre de Grace (“Respondent”) is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

11. Respondent is a “municipality” within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).

*In the Matter of Havre de Grace*  
*Docket No. CWA-03-2017-0056DW*

12. At all times relevant to this Order, Respondent has owned and/or operated a MS4 as that term is defined in 40 C.F.R. § 122.26(b)(8).

13. Respondent's MS4 is located within the City of Havre de Grace, Maryland which is an urbanized area as determined by the 2000 Decennial Census by the Bureau of the Census, and requires an NPDES permit to discharge storm water pursuant to 40 C.F.R. §122.32(a)(1).

14. Havre de Grace encompasses a total area of approximately 5.5 square miles and its population is estimated at 12,952 people, according to the 2010 Census.

14. Havre de Grace is a "small MS4" within the meaning of 40 C.F.R. § 122.26(b)(16).

15. Respondent's MS4 discharges stormwater to multiple waters, including Swan Creek, the Lower Susquehanna River, and the Chesapeake Bay. Swan Creek, the Susquehanna River, and their associated tributaries are "waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

16. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the State of Maryland to issue General NPDES permits in 1991.

17. On April 14, 2003, MDE issued notice to the City of Havre de Grace that it needed an NPDES General Permit for Discharges From Small Municipal Separate Storm Sewer Systems (MS4s). *See* 40 C.F.R. § 122.26(b). Havre de Grace received a General Discharge Permit No. MDR055500 ("Permit"), that authorized the discharge of stormwater from small MS4s, generally defined as MS4s located in an incorporated place with a population less than 100,000 on April 13, 2004. Although the Permit was set to expire on April 14, 2008, it has been administratively extended by MDE until a new permit is issued.

18. On January 16-17, 2014, EPA and its representatives performed a review of the City of Havre de Grace's MS4 system and program.

19. As part of the MS4 review, EPA visited the City's Department of Public Works facility. At the time of the inspection, the City had not obtained permit coverage from MDE for Discharges from Stormwater associated with Industrial Activities for the facilities covered by the Permit.

20. Following EPA's inspection, Havre de Grace submitted an NOI to MDE requesting coverage under General Permit No. 12-SW for Discharges from Stormwater associated with Industrial Activities for the City's Department of Public Works facility.

21. The City did not assign sufficient manpower to monitor and attend to the MS4 Permit requirements. As a result, a series of violations occurred.

**Count #1 – Illicit Discharge Detection and Elimination**

22. Pursuant to Part III. Section C of the Permit, “Permittees shall develop, implement, and maintain a program to identify and eliminate illicit storm drain system connections and non-stormwater discharges to the maximum extent practicable.”

23. Respondent failed to:

- a. map the extent of the storm drain system and cure the discrepancies between the GIS map and the actual location of some of the sewer outfalls;
- b. develop procedures for field screening storm drain outfalls on a consistent basis;
- c. develop inspection procedures for identifying the source of any suspected illicit discharges to the storm drain system;
- d. develop enforcement and penalty procedures and post them to the City’s website; and
- e. ensure that non-stormwater discharges to the MS4 are either permitted by MDE under NPDES or eliminated.

24. Respondent’s failure to comply with Part III. Section C of the Permit in developing, implementing and maintaining a program to identify and eliminate illicit storm drain system connections and non-stormwater discharges pursuant to Permit requirements is a violation of Section 301 of the CWA, 33 U.S.C. §§ 1311.

**Count #2 – Pollution Prevention and Good Housekeeping**

25. Pursuant to Section III.F of the Permit, Respondent must practice pollution prevention and good housekeeping techniques and procedures to reduce pollutants from all municipal operations.

26. Respondent failed to implement and maintain pollution prevention and good housekeeping techniques and procedures at City operations by: a) failing to provide employee training materials to prevent and reduce pollutant discharges to the storm drain; b) failure to provide runoff controls geared toward fleet yard and building maintenance activities; and c) failure to ensure all facility activities are properly permitted under NPDES Industrial General Permit (02-SW) or any other appropriate State or Federal water pollution control program.

27. In addition, the City had not ensured that all facility activities were properly permitted under NPDES Industrial General Permit (12-SW) which is the reissued version of 02-SW,

or any other appropriate State or Federal water pollution control program. In addition, the City was unable to provide documentation of stormwater inspections at the Department of Public Works Operations Center and Department of Public Works Maintenance Shop.

28. Respondent's failure to implement and maintain pollution prevention and good housekeeping techniques is a violation of Section 301 of the CWA, 33 U.S.C. §§ 1311.

### **III. ORDER**

AND NOW, this 13<sup>th</sup> day of February, 2016, pursuant to section 309(a) of the Act, 33 U.S.C. § 1319(a), having taken into account the seriousness of the violations and any good faith efforts by Respondent to comply with section 301(a) of the Act, Respondent is hereby ORDERED, pursuant to Section 309(a) to do the following:

29. Respondent shall take all actions necessary to comply with its NPDES Permits.
30. Steps to come into compliance shall include, but not be limited to, the following:
  - a. Develop and implement a plan to update and verify the storm sewer system map on a continual basis;
  - b. Develop and implement a plan to screen all storm sewer outfalls on a consistent basis, but no less than all outfalls within a five (5) year permit term;
  - c. Develop and implement a plan to prohibit illicit discharges to the storm system and to verify compliance;
  - d. Develop and implement a plan to reduce or eliminate pollutant exposure and discharges from municipally owned and/or operated sites; and
  - e. Develop a municipal training plan to facilitate the prevention, identification, and elimination of illicit discharges within the City and from municipal operations.
31. Respondents shall submit a detailed Supplemental Environmental Project (SEP) Plan for EPA's review and approval within 30 days of the effective date of this AOC, for Respondents proposed project entitled: "Bradford Square Pond Retrofit and Wildlife Habitat". The plan must:
  - a. Describe the actions that will be taken to construct the SEP, including the limits of disturbance, the structural and grading controls to be implemented, the removal and proper disposal of accumulated sediments, and the temporary and permanent stabilization the area;
  - b. Provide a cost estimate of the project, including materials, equipment, and labor;
  - c. Provide a schedule of implementation and completion, with appropriate milestones, including, but not limited to, a quarterly status report;
  - d. Include a long term operations and maintenance plan;
  - e. Describe the environmental benefits and stewardship benefits; and

- f. Prior to initiation of the project, Respondent shall ensure that all permits have been obtained.

32. After review of the plans submitted pursuant to Paragraph 31, EPA will: a) approve the plan, in whole or in part; b) approve the plan upon specified conditions; c) modify the plan to cure any deficiencies; d) disapprove the plan, in whole or in part; or e) any combination of the above. If EPA disapproves all or part of the plan, Respondents shall, within fourteen (14) days of receipt of EPA's disapproval, correct the deficiencies and resubmit the plan for approval. EPA retains the right, if the plan is not approved as provided in this Order, to order compliance in accordance with a plan developed by EPA.

33. Upon approval of the SEP plan described in Paragraph 31 (either with or without conditions or modifications by EPA), Respondents shall implement the plan as approved or modified by EPA. All SEP work shall be completed within one hundred and eighty (180) days of receiving the necessary permits.

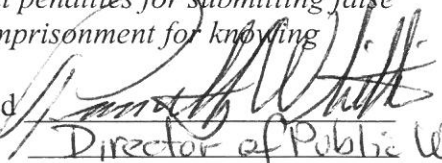
34. All plans identified in Paragraph 30 shall be submitted to EPA (with copies to MDE) within 180 days of the effective date of this Order.

35. All documents required by Paragraphs 30 - 34 of this Order shall be accompanied by a certification signed by a responsible municipal officer, as defined in 40 CFR § 122.22(d), that reads as follows:

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

Signed

Title

 P.E.  
Director of Public Works

All documents required herein shall be submitted to:

Andrew Dinsmore  
Enforcement Officer  
NPDES Enforcement Branch (3WP42)  
U.S. EPA, Region III  
1650 Arch Street



Philadelphia, PA 19103-2029

#### **IV. GENERAL PROVISIONS**

36. Issuance of this Consent Order is intended to address the violations described herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Further, EPA reserves any existing rights and remedies available to it under the CWA, 33 U.S.C. §1311, et seq., the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction. Further, EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Consent Order, following its effective date (as defined below).

37. This Order does not constitute a waiver or modification of the terms or conditions of any MS4 permit. Compliance with the terms and conditions of this Order does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.

38. For the purposes of this proceeding, the Respondent neither admits nor denies the factual allegations and conclusions of law set forth in this Order.

39. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

40. By entering into this Order, the Respondent does not admit any liability for the civil claims alleged herein.

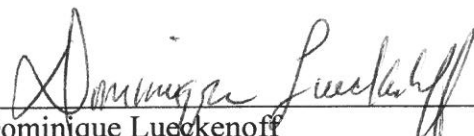
#### **V. EFFECTIVE DATE**

41. This ORDER is effective after receipt by Respondent of a fully executed document.

*In the Matter of Havre de Grace*  
*Docket No. CWA-03-2017-0056DW*

SO ORDERED:

Date: 2/2/17

  
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Dominique Lueckenoff  
Acting Director, Water Protection Division  
U.S. EPA Region III

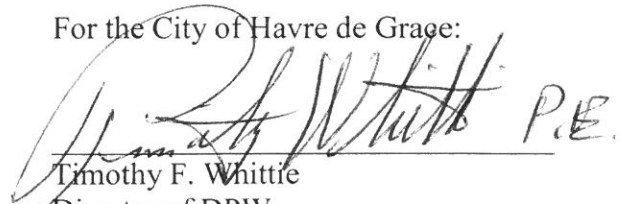


*In the Matter of Havre de Grace*  
*Docket No. CWA-03-2017-0056DW*

AGREED TO:

Date: 12.14.2016

For the City of Havre de Grace:

A handwritten signature in black ink, appearing to read "Timothy F. Whittie", is written over a horizontal line. To the right of the signature, the letters "P.E." are handwritten.

Timothy F. Whittie  
Director of DPW  
City of Havre de Grace

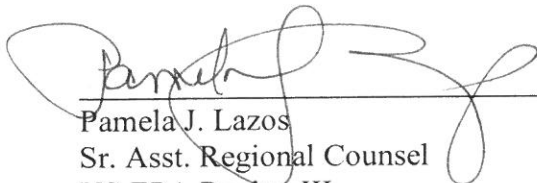
*In the Matter of Havre de Grace*  
*Docket No. CWA-03-2017-0056DW*

CERTIFICATION OF SERVICE

I hereby certify that I sent a true and correct copy of the Administrative Order for Compliance to the City of Havre de Grace via certified mail, return receipt requested, at the address listed below after filing the original with the Regional Hearing Clerk, US EPA Region III, 1650 Arch St., Philadelphia, PA 19103.

Timothy F. Whittie, Director  
Department of Public Works  
City of Havre de Grace  
2 Jerry Foster Way  
Havre de Grace, MD 21078

Paul Ishak, Esquire  
Stark and Keenan, P.A.  
Attorneys at Law  
30 Office Street  
Bel Air, Maryland 21014

  
\_\_\_\_\_  
Pamela J. Lazos  
Sr. Asst. Regional Counsel  
US EPA Region III

2/13/17  
Date: \_\_\_\_\_